

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS & ENERGY

)
Investigation by the Department on its own)
Motion as to the propriety of the rates and)
charges set forth in M.D.T.E No. 17, filed with)
the Department on May 5, 2000 to become) D.T.E. 98-57, Phase III
effective June 4 and June 6, 2000 by New)
England Telephone and Telegraph Company)
d/b/a Bell Atlantic - Massachusetts)
_____)

VERIZON MASSACHUSETTS'

MOTION FOR PARTIAL RECONSIDERATION

Verizon Massachusetts ("Verizon MA") files this Motion for Partial Reconsideration of the Department's September 29, 2000, Order in this proceeding. (1) Verizon MA seeks reconsideration of three issues: (1) the interval for line sharing collocation augments and related line-sharing specific cost studies; (2) the costs for loop qualification, loop conditioning and engineering query charges; and (3) the requirement that Verizon MA file a tariff for so-called plug and play arrangements at remote terminals.

The first issue concerns the Department's ruling to reject the application of the standard 76 business-day collocation provisioning interval and require a 40 business-day interval for collocation augments involving line sharing arrangements. The Department's decision is based on a mistaken interpretation of the evidentiary record and, therefore, should be reconsidered. Likewise, because that misinterpretation is the basis for the Department's finding that Verizon MA should come forward with line-sharing specific cost studies to support its nonrecurring Application Augment Fee and nonrecurring Engineering Implementation Charge, the Department should also reconsider that ruling.

The second issue relates to the Department's ruling that the Company may not charge for mechanized and manual loop qualification, engineering queries and loop conditioning. The Department reasoned that the underlying cost study was inconsistent with the approved TELRIC methodology in the Consolidated Arbitrations proceedings because the xDSL study was based on copper loops whereas the TELRIC

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study assumed an all-fiber-feeder network. The Department ruling is in error because the TELRIC study presented in the Consolidated Arbitrations proceeding pertained to voice grade services, not xDSL services, which the Federal Communications Commission ("FCC") recognized must be provided using copper loops. The FCC has ruled repeatedly that incumbent local exchange carriers ("ILECs") are entitled, as a matter of federal law, to recover the costs incurred to condition copper loops to support xDSL services. Verizon MA's cost study was appropriate, and the proposed rates should be approved on reconsideration.

Finally, Verizon MA requests that the Department reconsider its requirement that the Company simply incorporate Covad's "plug and play" options into its proposed tariff offering for access to unbundled packet switching. Instead, Verizon MA should have the right to develop a service that satisfies the Department's objectives and meets the needs of competitive local exchange carriers ("CLEC"), while taking into account the network infrastructure and FCC requirements. This is a reasonable modification that should be granted by the Department.

I. STANDARD OF REVIEW

The Department's standard of review for reconsideration of its decisions is well-established. The Department has stated that a motion for reconsideration "should bring to light previously unknown or undisclosed facts that would have a significant impact upon the decision already rendered." Boston Edison Company, D.P.U. 90-270-A, at 2-3 (1991); Western Massachusetts Electric Company, D.P.U. 85-270-C, at 12-13 (1987). It should not attempt to reargue issues considered and decided in the main case. Commonwealth Electric Company, D.P.U. 92-3C-1A, at 3-6 (1995); Boston Edison Company, D.P.U. 90-270-A, at 3 (1991). Rather,

[r]econsideration of previously decided issues is granted only when extraordinary circumstances dictate that the Department take a fresh look at the record for the express purpose of substantively modifying a decision made after review and deliberation. *Id.*

Alternatively, a motion for reconsideration may be based on the argument that the Department's treatment of an issue was the result of mistake or inadvertence. Massachusetts Electric Company, D.P.U. 90-261-B, at 7 (1991); New England Telephone and Telegraph Company, D.P.U. 86-33-J, at 2 (1989); Boston Edison Company, D.P.U. 1350-A, at 5 (1983). It is also appropriate where parties have not been "given notice of the issues involved and accorded a reasonable opportunity to prepare and present evidence and argument" on an issue decided by the Department. *Re: Petition of CTC Communications Corp.*, D.T.E. 98-18-A, at 2, 9 (1998).

II. ARGUMENT

A. The Department Should Reconsider Its Decision that Verizon MA Adopt a 40 Business-Day Interval for Collocation Augments for Line Sharing Arrangements Based on the Overwhelming Record Evidence that Such an Interval is Inadequate.

In its Order, the Department directed Verizon MA to complete collocation cable capacity augmentations and splitter installations for line sharing arrangements in 40 business days, which is considerably less than the standard 76 business-day interval currently used by Verizon MA for physical and virtual collocation arrangements and proposed by the Company for line-sharing augments in this case. Order at 53, 59. No state within Verizon's operating territory (i.e., the former Bell Atlantic service area) has adopted augment intervals for line sharing as short as this 40-business-day standard. (2)

Moreover, that interval would not provide sufficient time for Verizon MA to complete the necessary work activities involved.

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Nothing in the record shows that the 40 business-day interval is a reasonable, or even a consistently attainable, installation standard. In fact, Verizon MA presented evidence to the contrary, which demonstrates an average of 68 business days based on the Company's actual experience with collocation augments in Massachusetts for the first half of 2000. (3) Exh. VZ-MA 4, at 23. Accordingly, it is arbitrary and capricious for the Department to impose a standard that cannot be reasonably and reliably met, and then subject Verizon MA to performance penalties for failing to meet this impossible standard.

In establishing the 40 business-day interval, the Department stated that it "need only look to Verizon's responses to two record requests to support this determination." Order at 60. As discussed below, the Department's finding is based on a misinterpretation of the information contained in those responses, which describe the activities involved in collocation arrangements.

First, the Department concluded that considerably less work, and therefore less time, would be involved to complete a collocation augmentation for line sharing. Order at 59-60. The Department based that conclusion on an inappropriate comparison of the number of activities identified in Verizon MA's response to RR-DTE-11, which lists 21 tasks relating to the "line sharing collocation - Option C - installation activities," and its response to RR-CVD-6 (Supplemental), which identifies more than 100 activities associated with a standard collocation provisioning arrangement. Order at 60. In its Order, the Department characterized RR-DTE-11 as demonstrating a "streamlined approach to augmentation [that] is more representative of what the record demonstrates to be necessary for line sharing." Order at 67. That characterization is wrong.

What RR-DTE-11 shows is a high-level overview of "major milestones" required for collocation augments under a line sharing arrangement. This is comparable to RR-CVD-6, which also provides the same "milestones" for standard collocation arrangements. However, Verizon MA supplemented RR-CVD-6, at the Department's request, to provide a more detailed description of the activities involved for standard collocation arrangements. That supplemental list cannot be reasonably compared with RR-DTE-11, as the Department has incorrectly done, because it represents a different level of detail. Therefore, although the list of "additional" tasks in RR-CVD-6 (Supplemental) would appear, on its face, to support a longer collocation interval, the work required to implement a line sharing augment would essentially be the same.

As Verizon-MA explained in detail, there are a number of activities that consume the majority of the required time to complete a collocation job, whether it is a new collocation arrangement or an augment. (4) Exh. VZ-MA 4, at 22; Exh. VZ-MA 3 at 21. They include: surveying for space, design-engineering the cable routes, providing detailed engineering for cable and material specifications, placing and expediting cable, equipment and materials orders, receiving and taking inventory of the cable and associated materials and equipment, physically installing and testing the cabling and associated equipment, and coordinating with other work to be performed in a given central office ("CO").

In addition, contrary to the Department's statement, two site visits are normally required in either case. Typically, the first site visit is to assess whether the location can accommodate a collocation or line sharing arrangement, and the second is to perform the actual detailed engineering work, e.g., determine where the cable routing can be placed, the length of the cables, whether cable runs can be reused or rearranged, etc. Tr. 2: 343, 355; Order at 68-69. Thus, because of the different expertise and analyses involved, there would be no duplication, as the Department erroneously states.

Although some work, such as constructing a cage or identifying meet manholes, etc., may not be required in an augment situation, the omission of such work does not affect the overall interval required because the work activities involved are parallel (not sequential) activities in the process. (5) Order at 62; RR-CVD-6 (Supplemental). Accordingly, the record evidence does not support the Department's

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decision to dramatically reduce the standard 76 business-day interval by almost 50 percent for line sharing augment requests. Tr. 2: 338-340.

Because there is no practical distinction between the critical path activities that determine the completion interval for new collocation arrangements and for augments in Massachusetts, it is unreasonable to apply a substantially shorter interval for line sharing. This would seriously disrupt the standard collocation process, through which Verizon MA has provisioned thousands of collocation arrangements on time, and create serious pressures on equipment vendors, who will be reluctant to bid on such jobs due to the difficulty of meeting unreasonable deadlines. Tr. 2: 398-400. A shorter interval for line sharing would also require CLECs to perform all their necessary work, such as upgrading or installing new equipment in their networks, as well as augmenting their capacity at Verizon MA's central offices, more promptly. (6) The likely consequence of imposing an unrealistic interval that is almost half the required timeframe would be higher costs, poor quality and major delays in provisioning collocation augments, not greater speed or efficiency.

Contrary to the Department's conclusion, the 76 business-day interval is not a worst-case scenario, but rather reflects normal circumstances, which assume sufficient conditioned space to satisfy the application, proper forecasting by the CLEC, no special construction requirements, and no foreseen vendor delays in supplying the equipment and materials. Order at 60. Therefore, the 40 business-day interval prescribed by the Department is an unrealistic due date even under normal circumstances. Moreover, there is no evidence to substantiate CLECs' claims that a shorter interval is required to promote competitive entry or that CLECs would, or could, even move faster if a shorter interval were feasible.

In short, the Department's ruling is not based on record evidence, but is grounded on a mistaken interpretation of Verizon MA's responses to certain record requests. The Department should, accordingly, reconsider its ruling to reduce the standard 76 business-day interval for augments. There is simply insufficient evidence to justify 40 business days as a reasonable, or achievable, target for line-sharing augments at this time.

Likewise, Verizon MA seeks reconsideration of the Department's decision to deny the Company's proposed nonrecurring application augmentation fee and engineering implementation charges and its directive that the Company develop line-sharing specific cost studies to support those charges. The Department expressly based its finding on its determination that "the work activities that Verizon must perform to provision an augmentation request are not as numerous as those required to provision a new collocation arrangement." Order at 116. Accordingly, the Department should reverse its ruling on these proposed charges and related cost studies.

B. The Department Should Reconsider Its Decision to Disallow Verizon MA's Proposed Charges for Loop Conditioning, Loop Qualification, and Engineering Queries.

In its Order, the Department rejected Verizon MA's proposed charges for loop conditioning, mechanized loop qualification database, manual loop qualification and engineering queries based on its finding that the Company's cost methodology was inconsistent with the "forward looking" TELRIC study approved in the Consolidated Arbitrations proceeding. Order at 103-104. The Department's ruling ignores the unique requirements of xDSL technology and contravenes the FCC's directives that ILECs are entitled as a matter of federal law to recover the costs of conditioning loops to provide xDSL services, which the FCC recognized can only be provided using copper loops. Accordingly, the Department's decision must be reversed.

The basis for the Department's ruling was that Verizon MA's conditioning costs for xDSL services assumed an all copper network and that assumption is inconsistent with the TELRIC studies approved in Phase 4 of the Consolidated Arbitrations. The Department noted that it rejected Verizon MA's development of a nonrecurring costs study on a similar ground in its Phase 4-L Order in the Consolidated Arbitrations and simply applied the same rationale here. Order at 103-104. That analogy is misplaced.

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Verizon MA's loop conditioning analyses do not conflict with the network assumptions from the Consolidated Arbitrations because DSL compatible loops were not even considered in Phase 4 of the Consolidated Arbitrations proceeding. Indeed, the studies in Phase 4 assumed an all fiber-feeder network for voice grade services only and the network design did not contemplate xDSL services. Thus, the network assumption used in the Phase 4 studies cannot be considered dispositive of the appropriate forward-looking technology for loops designed to support xDSL transmission.

The simple fact is that DSL requires copper plant. Therefore, a separate TELRIC analysis is required for such loops to reflect the network that will actually be utilized for the services. As demonstrated in the case, Verizon MA's cost study is fully consistent with the Department approved costing methods. It is also fully supported by the FCC's rulings on DSL services.

As recognized by the FCC, "xDSL cannot work over fiber, and it generally requires a 'clean' (i.e., conditioned) copper loop." CC Docket No. 96-98, FCC 99-238, Third Report and Order and Fourth Notice of Proposed Rulemaking, ¶1204 n.390 (rel. Nov. 5, 1999) ("UNE Remand Order"). This means that the "most efficient technology currently available" for xDSL technology consists of copper cables. Thus, the reasonableness of the DSL forward-looking costs must be analyzed from that network perspective.

The FCC also authorized the ILEC's recovery of loop conditioning charges, (7) and recognized a link between the recovery of those costs and the characteristics of the existing copper plant. Specifically, in its UNE Remand Order, the FCC ruled that conditioning costs would be recoverable even where "voice-transmission enhancing devices," such as load coils, would not be required under current network standards. Thus, the FCC properly took into account the existing copper network in determining recoverable costs. To require the ILEC to incur substantial conditioning costs upon CLEC request without providing any compensation mechanism for such costs would be confiscatory.

In considering the same type of xDSL charges as the Department did, the New York Public Service Commission ("NYPSC") reached a different result. The NYPSC concluded that Verizon NY's TELRIC study was properly forward-looking because the very nature of xDSL technology precludes it from being costed on the basis of all-fiber feeder network used in the approved TELRIC studies in New York. See Case 98-C-1357, Opinion No. 99-12, Opinion and Order Concerning DSL Charges, at 13 (Dec. 17, 1999). If an all-fiber-feeder construct were required, copper loops would not exist at all. Therefore, the NYPSC determined that this would not be an appropriate network assumption for xDSL technology. The Department should do likewise on reconsideration.

The Department also mistakenly concluded that no loop qualification or loop conditioning would be required if an all-fiber-feeder network were assumed. Order at 105. This is contradicted by CLEC testimony that bridged taps would be present on the distribution cable regardless of whether the feeder cable is assumed to be copper or fiber. Tr. 2:420-21.

Since the presence of bridged taps on loops served over fiber or copper feeder can reduce transmission speeds, CLECs may request that Verizon MA remove excess bridged tap in order to improve the signal strength and transmission speed. Similarly, CLECs may request that Verizon MA install ISDN extensions on loops served over fiber feeder cable based on the length of the copper distribution cable. Thus, while a case may be made that load coils probably would not be necessary in a forward-looking fiber feeder network, the fact is bridged tap and ISDN additions are applicable in either network design. Accordingly, Verizon MA is entitled to recover its costs to condition a loop in these ways.

Moreover, even under a fiber-feeder network design assumption, CLECs would need to obtain loop qualification information through the mechanized loop qualification database, or manual loop qualification process or engineering query process to

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determine certain loop characteristics, such as cable length and presence and location of bridged tap. That loop information would enable the CLECs to determine what DSL services they can provide to a specific customer or location. Accordingly, even if the Department presumes an all fiber-feeder network, Verizon MA must be allowed to recover charges for loop qualification (manual or mechanized), engineering queries (e.g., loop make-up) and loop conditioning, where applicable.

Additionally, if the Department rejects Verizon MA's Motion and requires that the cost study for xDSL services be based on an assumed all fiber-feeder network, then Verizon MA should be allowed to charge appropriate rates to cover the assumed costs associated with providing xDSL loops over fiber feeder. They would include the loop qualification costs and loop conditioning costs that Verizon MA has already proposed in this proceeding, with the possible exception of recovery of costs associated with removal of load coils. These rates would also include the TELRIC costs of an xDSL capable loop provisioned over fiber feeder, which is not technically equivalent to the unbundled 2-wire or 4-wire analog loops whose rates Verizon MA had proposed adopting for purposes of provisioning unbundled xDSL capable loops or unbundled line sharing.

Although Verizon MA reserves the right to develop a forward-looking cost-based rate for unbundled DSL loops on 100 percent fiber feeder (with supporting cost studies), the Company estimates that an appropriate surrogate would be the existing unbundled DS1 rate, which is \$101 on a statewide basis, less the \$10 POTS loop rate for an unbundled line-shared arrangement, producing a monthly rate of \$90. D.T.E. -MA - Tariff No. 17, Part B, Sec. 5.3.2, Part M Sec. 2.5.3. This would ensure that Verizon MA is able to recover its costs derived using the fiber-based cost methodology mandated by the Department.

Finally, should the Department grant Verizon MA's Motion, the Department should also allow the Company to true-up applicable charges to CLECs for performing loop conditioning and loop qualification services while its Motion was pending before the Department. This is consistent with the clear FCC directives permitting ILECs to recover their costs for conditioning lines upon CLEC request, as described above.

C. The Department Should Reconsider Its Decision that Verizon MA Simply Incorporate Covad's Specific "Plug and Play" Options and Should Instead Permit Verizon MA to File a Proposed Tariff Offering That Would Satisfy the Department's Requirements and Is Consistent with the Company's Network Infrastructure.

In its Order, the Department stated that further investigation was required on the "plug and play" options proposed by Covad Communications Company ("Covad") and directed Verizon MA to file within 30 days of the Order a proposed tariff offering that "would enable CLECs to place or have Verizon place CLEC-purchased line cards in Verizon's DLC electronics at the RT (options 2 and 3 proposed by Covad)." Order at 87. The Department requested that "Verizon shall make this proposed tariff filing in D.T.E. 98-57-Phase I." Id. In this Motion, Verizon MA requests that it not be required to automatically incorporate Covad's "plug and play" options into its proposed tariff offering, but that it be allowed to develop a service that meets the CLECs' needs for unbundled packet switching while taking into account the network infrastructure and FCC requirements. This is a reasonable request and should be granted by the Department.

As the Department recognized in its Order, the four conditions set forth in 47 C.F.R. §51.319(c)(3)(b) must be met before Verizon MA can be ordered to provide unbundled packet switching or to offer the "plug and play" options proposed by Covad. Order at 88. Although it is clear that Verizon MA does not have the legal obligation to provide this as an unbundled network element ("UNE") at this time, the Department nevertheless requires that the Company come forward with a tariff that attempts to comply with Covad's proposal. Such action is inappropriate, premature and unproductive because Verizon MA neither has deployed, nor has any immediate plans to deploy, the requisite equipment to provision those offerings. Accordingly, the Department should grant this Motion and allow Verizon MA to develop a responsive tariff offering that would provide CLECs with an efficient and economic means of

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offering DSL service over loops served by fiber feeder without the artificial constraints imposed by the requirement to come forward with an offering containing Covad's "plug and play" options.

The purpose of the Department's Order is twofold: (1) to ensure that xDSL service is available to as many customers as practical, including customers served over fiber feeder, as soon as technically and practically feasible; (2) to eliminate any competitive advantage that Verizon MA may realize by introducing this first as a retail service and only later filing a comparable UNE tariff for CLECs. As a practical matter, the first objective cannot be achieved unless the Department permits Verizon MA to develop a tariff offering that it can implement. Covad's "plug and play" options would not accomplish that result.

For instance, Verizon MA may want to offer some form of packet switching type product to CLECs that is a complete service, like "Project Pronto" offered by SBC Communications, Inc. See CC Docket No. 98-141, ASD File No. 99-49, In the Matter of Ameritech Corp. and SBC Communications, Inc., Second Memorandum Opinion and Order (rel. Sept. 8, 2000). This new product offering would enable Verizon MA to own, deploy, install, and maintain the line cards at RTs, as well as the rest of the packet switching service, thereby eliminating significant and costly administrative, technical and operational difficulties associated with Covad's "plug and play" options. (8) Accordingly, Verizon MA should have the flexibility to propose a "Project Pronto-type" or other offering, which can be implemented more efficiently and effectively, without the requirement to file a tariff for Covad's "plug and play" options, which are infeasible.

As to the second issue, if the Department has any potential competitive concerns, Verizon MA would agree to give all carriers, including Verizon's separate data affiliate ("SDA"), access to these potential capabilities at the same time and subject to the same non-discriminatory rates, terms and conditions. In the meantime, if Verizon seeks and obtains an FCC waiver prior to the establishment of the SDA, Verizon MA will not utilize this arrangement on a retail basis until a wholesale offering is made available to all CLECs in Massachusetts.

In short, the Department should grant Verizon MA's Motion to submit a tariff proposal that it can commit to implement in providing CLECs' access to unbundled packet switching. The Department should further eliminate its requirement that Verizon MA submit a tariff incorporating Covad's specific "plug and play" options, which the Company cannot technically support to provide the services the CLECs request. To the extent that Covad or other parties wish to present such options for the Department's consideration in its investigation of this matter, they can do so.

C. CONCLUSION

For the foregoing reasons, Verizon MA's Motion for Partial Reconsideration should be granted.

Respectfully submitted,

VERIZON MASSACHUSETTS

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1. 1 In separate but related motions, Verizon MA also seeks to: (1) extend the judicial appeal period; (2) defer the filing of a tariff and line-sharing specific cost studies regarding the nonrecurring Application Augment Fee and nonrecurring Engineering Implementation Charge pending the Department's ruling on reconsideration herein on the standard 76 business-day interval for augments; (3) extend the time for filing a proposed tariff offering for providing competitive local exchange carriers ("CLECs") with line sharing on fiber-fed loops and access to unbundled packet switching equipment; and (4) clarify the Department's ruling on the 10 calendar-day collocation site survey report requirement upon CLEC request.

2. 2 The shortest interval is 45 business days, which was adopted in Pennsylvania and Maryland on a phased-in basis.

3.

3 That average is based on 233 actual completed augment arrangements that included cabling additions. Exh. VZ-MA 4, at 23. The range of days supporting that average augment interval is 49 to 89 business days. See RR-RLI-6; Tr. 2:369.

4.

4 The most significant factors supporting the 76 business-day interval are the engineering, furnishing, installation and testing of the cabling and frame termination. Exh. VZ-MA 4, at 21. For instance, there are times when Verizon MA cannot run the cables the same way, must remove or rearrange the existing cable or equipment, or has to build new cable racks or drill new holes in the floor. Tr. 2:338-39, 342-43, 384. In addition, because of the volume of pending applications, this is a dynamic process, and thus cable routing must be checked again to ensure that a cable run is not overloaded and is still available. Tr. 2:380-82.

It should also be noted that vendor delays, such as those Verizon MA experienced with Lucent (e.g., more than 76 days late in material delivery), can also be expected from time to time. Tr. 2:342. Because of the uniqueness of choosing the location and frame termination, equipment must often be special-ordered for a job. Tr. 2:339. For instance, manufacturers equip cables with connectors on the end based on the exact distance measurements and location. Tr. 2:339. Accordingly, it is not optimum from an engineering perspective to stockpile material, for which there is also an added upfront cost to Verizon MA with no guarantee of recovery.

5.

5 There are numerous other activities that take place on a parallel track, and thus do not affect the overall time period. For example, the DTE assumed that if verification of NEBS compliance for a splitter had already been completed for a previous application, the time necessary to perform that function could be subtracted from the interval. This is not the case since that step in the process is performed simultaneously with processing the application fee. See e.g., Order at 67 fn. 33, 34, 35.

6.

6 Like ILECs, CLECs are also subject to vendor delays, as evidenced by Covad's prolonged (i.e., more than two-month) delay in providing splitters to Verizon MA for line sharing arrangements in Massachusetts. Tr. 2:373-74.

7.

7 CC Docket No. 98-147, Memorandum Opinion and Order and Notice of Proposed Rulemaking, ¶53 n.98 (rel. August 7, 1998); See also CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15, 499, at ¶382 (rel. August 8, 1996). This ruling was reaffirmed in the FCC's UNE Remand Order, ¶¶192-93.

8.

8 For example, if multiple CLECs provide line cards at RTs, this could create inventory management problems, provisioning delays, and compatibility issues. This also becomes particularly difficult to administer when there are multiple offerings available in play at the same time, i.e., if Verizon owns the cards in some cases, and the CLEC owns them in others. There is no benefit to having CLECs own these line cards in the middle of a packet network, and to the extent a packet product is required by the Department, it should be based on Verizon's ownership of the cards, and not the "plug and play" options proposed by Covad.